

Tuesday - October 14, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Martin gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SATURDAY, OCTOBER 18, 1997, AS "JAMES McCONNELL SMITH DAY"

Mayor Martin proclaimed Saturday, October 18, 1997, as "James McConnell Smith Day" in City of Asheville and presented the proclamation to Mr. Ron Holland who accepted the proclamation on behalf of Ms. Frances McDowell. He briefed the Council on the activities that will be taking place during that day.

B. PRESENTATION OF GRANTS IN RECOGNITION OF ALL AMERICA CITY DESIGNATION

Mayor Martin said that when the City of Asheville received the All America City designation in June, we qualified to submit a proposal to the Allstate Foundation for a \$10,000 community grant. This grant was to be funneled back into the community for community projects. Handmade in America, the Asheville-Buncombe Vision, and the Minnie Jones Family Health Care Center were projects that were instrumental in our receiving the All America City designation. For this reason, we are dividing this grant between these three projects that are promoting partnerships, collaboration, and community input.

Vice-Mayor Field presented a check in the amount of \$3,333.33 to Ms. Rebecca Anderson, representing HandMade in America. Councilman Worley presented a check in the amount of \$3,333.33 to Ms. Minnie Jones, representing the Minnie Jones Health Center. Councilman Hay presented a check in the amount of \$3,333.33 to Pam Wahl and Benson Slosman, representing the Asheville-Buncombe VISION. All recipients thanked Council for their support and explained how the grant funds would be used to benefit the City of Asheville and its citizens.

II. CONSENT:

At the request of Councilman Skalski, Items H, L and O were removed from the Consent Agenda for further discussion.

At the request of Mr. Ralph Bishop, Item C was removed from the Consent Agenda for further discussion.

A. RESOLUTION NO. 97-178 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 10.1 ON CARROLL AVENUE IN THE EAST END/VALLEY STREET REDEVELOPMENT AREA TO DEIRDRE RENEE TOBE

Summary: The consideration of conveyance of Disposal Parcel 10.1 on Carroll Avenue to Deirdre Renee Tobe in the amount of \$7,875. -2-

On September 23, 1997, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 10.1 in the East End/Valley Street Community Improvement Area. The advertisement ran in the Asheville Citizen-Times on September 26, 1997, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Deirdre Renee Tobe in the amount of \$7,875 was not upset and the sale to Deirdre Renee Tobe should be approved.

Approval of the resolution will authorize the sale of the property to Deirdre Renee Tobe for the amount of \$7,875.00.

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B. RESOLUTION NO. 97-179 - RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE A COMPLAINT AND DECLARATION OF TAKING AND OTHER RELATED DOCUMENTS IN BUNCOMBE COUNTY SUPERIOR COURT FOR THE CONDEMNATION OF CERTAIN TRACTS OF REAL PROPERTY LOCATED IN PHASES I OF THE BREVARD ROAD ANNEXED AREA FOR THE CONSTRUCTION AND INSTALLATION OF WASTEWATER LINES

Summary: The consideration of adopting a "Resolution of Condemnation" for seven properties located in the Brevard Road area.

The City of Asheville has previously awarded a contract for the installation of a gravity sanitary sewer system to serve the Brevard Road and construction is underway. This project will provide access to public sanitary sewer service within the area.

Over the past several months, easement negotiations have been on-going with property owners in this area. However, there are seven (7) properties in which agreement has not been reached at this time regarding a sanitary sewer easement. Due to the need to complete the project, staff requests Council's consideration of a "Resolution of Condemnation" on seven properties in which easement negotiations have not been finalized. These properties are as follows:

- Pin Number 9627-20-81-3926 - Lelia Page Cornwell (along Dogwood Road)
- Pin Number 9627-20-82-3216 - Western Carolina Forklift (along Dogwood Road)
- Pin Number 9627-20-80-9493 - Leonard J. Effler and Tammy F. Effler (along Poodle Way)
- Pin Number 9627-20-80-7448 - Leonard J. Effler and Tammy F. Effler (along Poodle Way)
- Pin Number 9627-20-90-3807 - Joseph A. Dennis and Ronda H. Dennis (along Poodle Way)
- Pin Number 9627-20-80-2403 - A. Brigman, Heirs (along Pine Lane)
- Pin Number 9627-20-80-3312 - Fred Mathis and Flaura F. Mathis (along Pine Lane)

The City is in the process of appraising each of the properties to determine the fair market value of the property taking into consideration the provision of sanitary sewer service. From the City's perspective, this is a definite enhancement of the properties.

The City will continue to work with these property owners to attempt to finalize the easement negotiations. The primary purpose of the "Resolution of Condemnation" is to establish a time parameter of 30 days, which is a prerequisite to the filing of the complaint and "Declaration of Taking" so that construction may proceed.

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Staff recommends the Resolution of Condemnation be approved for the seven properties listed herein with direction for

staff to continue to negotiate with the property owners to try and reach resolution if possible.

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C. RESOLUTION ENDORSING LEGISLATION FOR LOCAL ZONING AUTHORITY FOR ADULT ESTABLISHMENTS

This item was pulled from the Consent Agenda for further discussion.

D. RESOLUTION NO. 97-181 - RESOLUTION OF INTENT TO ENTER INTO A LEASE AGREEMENT WITH THE OPPORTUNITY CORPORATION OF MADISON-BUNCOMBE COUNTIES FOR THE RENOVATIONS TO THE REID ANNEX

Summary: The consideration of resolution directing the City Clerk to advertise an offer to lease the Reid Annex Building to the Opportunity Corporation of Madison-Buncombe County for renovations.

The Parks and Recreation Department submitted a reengineering proposal during the budget process to develop a collaborative effort to renovate the Reid Recreation Center Annex for Child Care. This effort resulted in working with the Opportunity Corporation of Madison-Buncombe County to provide the funding for the renovation of the Reid Annex and to operate a Head Start Child Care Program. The Opportunity Corporation has successfully received grant funding totaling \$670,000 for the renovation which is scheduled to begin by the end of this calendar year. The Parks and Recreation Department will be working closely with the Opportunity Corporation and the Arts Alliance to develop an innovative program that will not only provide child care but also expose these children to a cultural arts environment. The Parks and Recreation Department is excited about this collaborative effort which will result in renovating an existing City facility at no cost to the City of Asheville. More importantly, this effort will provide a much-needed child care facility for parents who could not otherwise afford this service.

The Parks and Recreation Department recommends adoption of the resolution directing the City Clerk to advertise an offer to lease the Reid Annex Building to the Opportunity Corporation of Madison-Buncombe County for renovations.

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E. RESOLUTION NO. 97-182 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WHEELER CONSTRUCTION CO. INC. FOR THE WEST AREA ANNEXATION SANITARY SEWER IMPROVEMENTS PHASE II

Summary: The consideration of adopting a resolution awarding the contract for the West Area Sanitary Sewer Improvements, Phase II, to Wheeler Construction Company Inc. in the amount of \$367,615.

The City Council approved 3.2 million dollars for sewer improvements. This project is known as West Area Annexation Sanitary Sewer Improvements, Phase II. These funds were to be used for priority sewer improvements.

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The City Engineering Department has developed construction plans for the West Area Annexation Sanitary Sewer Improvements, Phase II. The engineer's estimate for this project is in the amount of \$420,900.

On Tuesday, September 30, 1997, at 9:00 a.m., the Engineering Department received four bids for the project. A tabulation of bids is as follows:

Wheeler Construction Co., Weaverville, N.C. \$367,615.00

Steppe Construction Co., Mill Spring, N.C. \$411,700.00

Hobson Construction Co. Inc., Arden, N.C. \$419,625.00

Buckeye Construction Inc., Canton, N.C. \$499,297.50

The construction time for this project is identified as 75 calendar days in the contract documents. If Contractor shall neglect, fail or refuse to complete the work within the time herein specified, then the Contractor pays the sum of \$250 as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract. There are only four easements left to be signed on the project.

Staff recommends that City Council accept a resolution awarding the bid for West Area Annexation Sanitary Sewer Improvements, Phase II to the responsible low bidder, Wheeler Construction Company Inc., in the amount of \$367,615, and authorize the City Manager to execute all necessary agreements and contracts.

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F. RESOLUTION NO. 97-183 - RESOLUTION AWARDING BIDS FOR PRE-FABRICATED BRIDGE REPLACEMENT MATERIALS TO POMONA SUPPLY COMPANY

Summary: Consideration of a resolution to award Bid Request No. 469-98 for the purchase of pre-fabricated bridge replacement materials for the Public Works Department's Elizabeth Street Project.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were received to furnish pre-fabricated bridge replacement materials for the Public Works Department's Elizabeth Street Project. Three (3) bidders submitted proposals as shown below:

Pomona Supply Co, Greensboro, N.C. \$57,543.50

Roger F. Williams Co., Asheville, N.C. \$62,710.20

Roger F. Williams Co., Asheville, N.C. (Alternate) \$58,678.20

Permatile Concrete Prod., Bristol, VA/TN \$84,004.18

Permatile Concrete Prod., Bristol, VA/TN (Alternate) \$80,650.18

Bid specifications permitted bids on either precast concrete bridge sections or on aluminum box culvert. In addition to the standard evaluation criteria, which includes compliance to specifications, cost, etc., bids were also evaluated on the basis of total overall cost to purchase the pre-fabricated bridge materials, as well as cost of work to be undertaken and materials to be furnished by the City for installation of the bridge. The bid summary shows the total overall cost to the City for each bid replacement method proposed.

Bids have been reviewed for technical compliance to specifications by the Public Works Department, and their concurrence received in the recommendation. -5-

Funds for this purchase are to be from the Public Works Department appropriations, Account Code 60-430-15-851-13-4410.

Subject to Council's approval, it is recommended that the award be made to the bidder with the lowest overall cost, Pomona Supply Company, Inc., Greensboro, N. C., in the amount of \$48,580.50 for the purchase of aluminum box culvert bridge materials.

RESOLUTION BOOK NO. 24 - PAGE 232

G. RESOLUTION NO. 97-184 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE STATE OF N.C. FOR SELECTION OF THE ASHEVILLE FIRE DEPARTMENT'S HAZARDOUS MATERIALS RESPONSE TEAM AS "REGIONAL RESPONSE TEAM" FOR MAJOR HAZARDOUS MATERIALS EMERGENCIES IN WESTERN NORTH CAROLINA

Summary: The North Carolina Department of Crime Control/Public Safety's Emergency Management Division has asked the City of Asheville to renew its agreement with the State to provide hazardous materials emergency response

in Western North Carolina through September of 1999.

In 1994, the North Carolina General Assembly established funding for a "regional response" approach to hazardous materials emergencies. This approach involved selection of the state's top six local fire department hazardous materials response teams to respond to multi-county areas in case of emergency, using vehicles and equipment furnished by the state.

In late 1994, the Asheville Fire Department's "haz mat team" was selected by the State's Emergency Management Division as the "regional response team" for Western North Carolina. In mid-1995, the City and the State entered into an agreement through which AFD's hazardous materials response team was furnished with a response vehicle and equipment, and through which the State agreed to reimburse the City for training, maintenance, administrative and related expenses for regional response. Since this agreement was established, Asheville's "Regional Response Team 6" has responded to a major railroad derailment, an acid tanker overturn, a chemical warehouse fire and other significant regional incidents, as well as dozens of smaller local chemical emergencies.

The agreement between the City and the State expired in July, 1997. In early August, the City and State agreed to extend that agreement through the end of September in anticipation of a new agreement. That new agreement has been delivered to the City and reviewed by City staff and recommended to the City Manager for City Council approval.

The new agreement provides for hazardous materials emergency response for major incidents in North Carolina's 20 western counties. The State will continue to provide and maintain the team's response vehicle ("RRT 6") and to reimburse the City for provision of a vehicle to tow a newly-provided Regional Response Team trailer. The State will also reimburse the City for training expenses (up to \$14,000), administrative expenses (up to \$18,000), workers compensation expenses (up to \$5,000) and medical surveillance/evaluation (up to \$5,000) for each year of the proposed two-year agreement.

The Fire Chief recommends City Council adoption of a resolution authorizing the Mayor to enter into an agreement with the State of North Carolina through which the City of Asheville will provide hazardous materials emergency response in Western North Carolina, and the State -6-

will furnish response equipment and reimburse expenses of the City's hazardous materials response team for such response.

RESOLUTION BOOK NO. 24 - PAGE 234

H. RESOLUTION AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT PURCHASE CONTRACT REGARDING FINANCING OF THE RENOVATIONS OF THE MUNICIPAL BUILDING, WATER MAINTENANCE BUILDING AND THE CITY BUILDING ROOF; RENOVATION OF THE FIRST FLOOR OF THE GROVE ARCADE AS A PUBLIC MARKET; CONSTRUCTION OF A HIGH TECH/FLEX BUILDING AT BROADLANDS TECHNICAL PARK; AND REFUNDING OF THE SERIES 1991 CERTIFICATES OF PARTICIPATION

This item was pulled from the Consent Agenda for further discussion.

I. RESOLUTION NO. 97-185 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A TWO-YEAR FIRE PROTECTION AGREEMENT WITH THE HAW CREEK FIRE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to sign a two-year fire protection agreement with the Haw Creek Fire Department for a term through June 30, 1999.

In 1988, when the City of Asheville annexed in the Haw Creek area, the City entered into a fire protection agreement with the Haw Creek Fire Department. This agreement was pursuant to North Carolina law which requires a good-faith offer of a five-year fire protection agreement between the annexing city and any affected rural fire department in order to provide for makeup of lost "fire tax" revenue. In 1992, the City again annexed in the Haw Creek area; the 1988 agreement was amended and incorporated as part of a new five-year 1992 fire protection agreement, again in compliance with the aforesaid state law.

Although there is no longer a legal requirement that the City contract with Haw Creek Fire Department, there are benefits to continuing the present contractual relationship for a two-year period. Haw Creek has a five-day-a-week on-duty firefighter, who, with Haw Creek's equipment and volunteer personnel, serves as a "back-up" for Asheville Fire Department's Engine 8 (housed at Avon and Tunnel Road). Haw Creek also responds on a "first-in" basis (along with AFD resources) in Haw Creek and Sondley Estates.

At Haw Creek's request—and with the review and approval of the City Manager—Asheville Fire Department representatives met with Haw Creek Fire Department's Board of Directors in August and September to review the 1992 annexation contract and to identify future relationships. All participants agreed on the following points:

**1. The Haw Creek Fire Department's existence should not depend on whether the City**

contracts with Haw Creek for fire protection services; and

**2. As long as there are definable benefits to both parties to contract for services,**

continuation of an agreement is in the best interests of the City and Haw Creek.

Based on agreement on these points, Haw Creek and City staff representatives are proposing an agreement substantially similar to the annexation agreement agreed to and adopted in 1992, with the following -7-

two exceptions: First, reimbursement by the City would be at \$53,760, which is less than half of the total amount budgeted for the last year of the 1992 agreement (\$108,827), and, second, the Haw Creek Fire Department would agree to make a good faith effort to expand its fire tax protection area and/or look to partnerships with neighboring fire departments to provide for a revenue base that will leave the Haw Creek Fire Department independent of Asheville financial support. At the end of the two (2) year term the City would reassess benefits to the City from the Haw Creek Fire Department.

The relationship between the City and Haw Creek in the wake of annexation has been a success story. While the City's 1988 and 1992 annexations resulted in Haw Creek's loss of 90% or more of its fire tax area, the City and Haw Creek—with state approval—joined together so that Haw Creek could be eligible for fire tax revenue from the Chunn's Cove area (an area that Haw Creek had covered for years with no financial support from Chunn's Cove residents). Because Asheville's fire headquarters was within five road miles of the Chunn's Cove community (and Haw Creek's station was not), Asheville agreed to file for recognition as a "substation" for Haw Creek, so Haw Creek would be eligible for fire tax support from Chunn's Cove. As a result, Haw Creek depends on Asheville not for 90% of its revenues, but for about one-third of those revenues.

Haw Creek representatives have clear plans to develop a new all-weather road access that should result in the addition of new fire-tax response areas that are expected to correspondingly reduce Haw Creek's reliance on revenues from the City of Asheville.

The Fire Chief recommends that City Council adopt a resolution authorizing the City Manager to sign a two-year fire protection agreement with the Haw Creek Fire Department for a term through June 30, 1999.

RESOLUTION BOOK NO. 24 - PAGE 235

J. RESOLUTION NO. 97-186 - RESOLUTION AUTHORIZING SUBORDINATION OF CERTAIN DEMOLITION LIENS

Summary: The consideration of a resolution authorizing the City Manager and others to subrogate demolition liens on certain properties

When the City demolishes a dwelling that has been found to be dilapidated under the Minimum Housing Code, a lien for the cost of the demolition attaches to the property, and has the same priority as a lien for special assessments. The

liens remain valid for 10 years.

Occasionally, the owners of the lots wish to rebuild on them, or have the opportunity to convey the lots to persons wishing to rebuild, but the demolition lien is a cloud on the title and may keep a person from conveying the lot or obtaining a construction loan. The result is that sometimes an otherwise desirable or buildable lot will remain vacant, and continue to be a blight on a neighborhood undergoing revitalization. As enforcement of the Minimum Housing Code is emphasized, and as rebuilding in the central city and infill development increase, this situation is likely to occur more frequently.

The resolution would give limited authority to the City Manager, the Planning Director and the Community Development Director, to enter into agreements to subordinate demolition liens in designated redevelopment areas. This is similar to the authority that now exists to subordinate deeds of trust on properties in redevelopment areas.

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The resolution limits to \$12,000 the principal amount of liens that may be subordinated, and requires that such subordinations be reported in the same manner as for deed of trust subordinations. The subordination would apply only to the extent needed to obtain construction financing, and the lien would have to be satisfied in order to obtain clear title to the affected property.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 24 - PAGE 236

K. ORDINANCE NO. 2411 - ORDINANCE AMENDING THE TREE ORDINANCE

Summary: City staff presented the Tree Ordinance to City Council at their worksession on May 20, 1997. The following are minor revisions to that ordinance:

1) Section 20-4: ADD "Engineering Director: The head of the City of Asheville Engineering Department or his / her designee."

2) Section 20-4: ADD "Parks and Recreation Director: The head of the City of Asheville Parks and Recreation Department or his / her designee."

3) Section 20-5 (B): "Additional Duties"

(a) Replace "1. The Planning and Development Director shall be responsible for formulating a Master Street Tree Plan (MTSP)..."

WITH: "1. The Parks and Recreation Director shall be responsible for formulating a Master Street Tree Plan (MTSP)..."

(b) Replace: "2. The Planning and Development Director shall have prepared another document entitled 'The Public Improvements Design Manual', which shall contain the guidelines and specifications for tree planting, care, maintenance, removal, and landscape design entitled Guidelines and Specifications of Tree Planting on Public and Private Property, which shall be adopted by City Council and used by developers, landscape architects, designers, and the general public in furtherance of the requirements and intent of this chapter. The guidelines shall be reviewed, at a minimum, every two (2) years by the Planning Department Director, the Public Works Director, and the Tree Commission. Major revisions to the Guidelines shall be approved by City Council."

WITH: "The Engineering Director shall have prepared another document entitled Asheville Standards Specifications and Details" manual, which shall contain the guidelines and specifications for tree planting, care, maintenance, removal and landscape design entitled Guidelines and Specifications of Tree Planting on Public and Private Property, which shall be adopted by City Council and used by

developers, landscape architects, designers, and the general public in furtherance of the requirements and intent of this chapter. The Guidelines shall be reviewed, at a minimum, every two (2) years by the Planning and Development Department Director, the Parks and Recreation Director, the Engineering Director, the Public Works Director, and the -9-

Tree Commission. Major revisions to the Guidelines shall be approved by City Council."

4) Article IV, Section 20-52, "Inspection of Sites"

(a) Replace: "A. The Public Works Director and the Director of Planning and Development may periodically inspect areas subject to the provisions of this chapter."

WITH: "A. The Public Works Director, the Parks and Recreation Director, and the Director of Planning and Development may periodically inspect areas subject to the provisions of this chapter."

Staff recommends the adoption of the above revisions to Chapter 20 (Trees).

ORDINANCE BOOK NO. 16 - PAGE 301

L. BUDGET AMENDMENT RELATIVE TO THE ALL AMERICA CITY GRANT

This item was pulled from the Consent Agenda for further discussion.

M. ORDINANCE NO. 2412 - BUDGET AMENDMENT TO REPROGRAM LINE ITEMS IN THE CAPITAL PROJECT ORDINANCE (35 FUND) TO REFLECT THE TRANSFER OF COMPLETED PROJECTS TO THE CITY'S FIXED ASSET LEDGER

Summary: The consideration of housekeeping amendments to reflect the transfer of completed projects to the City's fixed asset ledger to be capitalized rather than expensed.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds in the 29 Fund.

Approve amending and restating Capital Project Ordinance 82-25 and Capital Project Ordinance 92-17 in order to reflect the transfer of completed projects to the City's fixed asset ledger.

The Regional Water Authority approved a resolution amending and restating Capital Project Ordinance 82-25 and Capital Project Ordinance 92-17 on September 16, 1997.

ORDINANCE BOOK NO. 16 - PAGE 303

N. ORDINANCE NO. 2413 - BUDGET AMENDMENT TO REPROGRAM LINE ITEMS IN THE CAPITAL PROJECT ORDINANCE (29 FUND) TO REFLECT THE TRANSFER OF COMPLETED PROJECTS TO THE CITY'S FIXED ASSET LEDGER

Summary: See Item M. above.

ORDINANCE BOOK NO. 16 - PAGE 305

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O. BUDGET AMENDMENT TO PROVIDE ADDITIONAL FUNDING FOR FESTIVALS AND SOCIAL EVENTS FROM REVENUES GENERATED BY THESE EVENTS

This item was pulled from the Consent Agenda for further discussion.

P. MOTION SETTING A PUBLIC HEARING ON OCTOBER 28, 1997, TO REZONE TWO LOTS ON WESTWOOD PLACE AND ARGYLE LANE FROM RM-8 TO CBD AND ONE LOT FROM RM-8 AND CB II TO CBD.

Q. MOTION SETTING A PUBLIC HEARING ON OCTOBER 28, 1997, TO REZONE A PORTION OF 1897 HENDERSONVILLE ROAD FROM RM-6 TO OFFICE BUISNESS, RS-2 AND RS-4.

R. MOTION SETTING A PUBLIC HEARING ON OCTOBER 28, 1997, TO REZONE PROPERTY AT YORKSHIRE AND REED STREETS FROM RS-8 TO OFFICE

S. MOTION SETTING A PUBLIC HEARING ON OCTOBER 28, 1997, TO CONSIDER A MODIFICATION REQUEST FROM THE SUBDIDIVISON STANDARDS TO PERMIT THE FLAGPOLE PORTION OF A LOT LOCATED ON OAKLEY SCHOOL ROAD TO BE USED IN CALCULATING COMPLIANCE WITH MINIMUM LOT AREA REQUIREMENTS

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Consent Agenda and they will not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously

ITEMS REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

RESOLUTION NO. 97-180 - RESOLUTION ENDORSING LEGISLATION FOR LOCAL ZONING AUTHORITY FOR ADULT ESTABLISHMENTS

Summary: The consideration of a resolution endorsing Senate Bill 452 Strengthening Local Control Over Sexually Oriented Businesses

Even though zoning and local use controls are recognized to be matters of concern for local governments, North Carolina statutes regulating sexually explicit conduct and adult establishments (sexually Oriented Business) have been interpreted by the courts in such a way as to establish a de facto doctrine of State pre-emption with respect to such matters. Localities still maintain some control over the location of sexually oriented businesses through zoning ordinances.

In the 1997 Session of the North Carolina General Assembly, a bill was introduced, Senate Bill 452, that would restore a measure of regulatory authority to local governments with respect to sexually oriented businesses, and partially abrogate the State's judicially-established pre-emption in this area. The bill requires that the constitutional protections that apply to such activities continue to be recognized.

The bill passed the Senate hardily, and seemed likely to pass the House as well, but failed to come out of committee before the Legislature adjourned in August. The bill had the support of the North Carolina League of Municipalities and many local governments. Senator Roy Cooper of Rocky Mount introduced the bill, and expects it to be considered during the Short Session of the Legislature in 1998.

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The resolution, if adopted, will express the Council's support for Senate Bill 452. Copies of the resolution will be sent to Senator Cooper, and to those members of North Carolina House whose districts include the City of Asheville.

At the request of Mr. Ralph Bishop, a copy of the resolution was furnished to him.

Mayor Martin said that members of Council have been previously been furnished with a copy of the resolution and it will not be read.

Vice-Mayor Field moved for the adoption of Resolution No. 97-180. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 227

H. RESOLUTION NO. 97-187 - RESOLUTION AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT PURCHASE CONTRACT REGARDING FINANCING OF THE RENOVATIONS OF THE MUNICIPAL BUILDING, WATER MAINTENANCE BUILDING AND THE CITY BUILDING ROOF; RENOVATION OF THE FIRST FLOOR OF THE GROVE ARCADE AS A PUBLIC MARKET; CONSTRUCTION OF A HIGH TECH/FLEX BUILDING AT BROADLANDS TECHNICAL PARK; AND REFUNDING OF THE SERIES 1991 CERTIFICATES OF PARTICIPATION

Summary: Consideration of a resolution authorizing the negotiation of an installment purchase contract, directing the publication of notice with respect thereto and providing for certain related matters.

Financing of the renovation of the Municipal Building, Water Maintenance Building and the City Building Roof; renovation of the first floor of the Grove Arcade as a public market; the construction of a high tech/flex building at Broadlands Technical Park and refunding of the Series 1991 COPs (which funded the acquisition of the Public Works Facilities) will require the issue of Certificates of Participation (COPs). The actual issuer of the COPs is Asheville Public Financing Corporation (APFC), a not for profit corporation which was formed to aid the City of Asheville in complex financing such as this COPs. In order to service the debt, the City will enter into an amendment to the existing 1991 installment purchase contract with APFC whereby the City agrees to provide periodic payments (which equal the debt service). The debt is to be secured by a deed of trust on the Municipal Building, the City Building, the Water Maintenance Building and a continued deed of trust on the Public Works Facilities (which was pledged for the 1991 COPs). In furtherance of the issue of COPs, the attached resolution provides the following: (1) Authorizes the City Manager and Finance Director to negotiate the APFC contract amendment and convey the deeds of trust to facilitate financing in an amount not to exceed \$27,000,000; (2) Directs the Finance Director to file the required financing application with the Local Government Commission; (3) Directs the City Manager and Finance Director to retain Parker, Poe, Adams & Bernstein as Special Counsel and First Union Capital Markets, Corp.; Wheat First Butcher Singer; and A.G. Edwards & Sons Inc. as Underwriters; and (4) Establishes a public hearing by City Council, on October 28, 1997 at 5:00 p.m., concerning the contract amendment, the deeds of trust, proposed projects and associated transactions.

Councilman Skalski was concerned that the City would be going in debt for \$27 million in financing and \$16 million in interest for a total of \$43 million. He said the City's debt is now approximately \$38 million. A lot of that money is on the municipal bonds that were taken -12-

out for sidewalk repairs, Pack Place Project and various small leasing agreements. He said that approving this finance will basically double our debt. He said the Municipal Building project is slated to cost about \$14.2 million plus approximately \$6 million in interest. He did feel this project should go forward and was long overdue.

Finance Director Bill Schaefer said that the proposal is to fund the entire package, not separate pieces. He pointed out that the debt of \$27 million and the interest in the amount of \$16.5 is over the life of the financing. When you finance, you look at what you are buying it for at the present value of the money. Over the life of the money that you borrow, you will pay interest on it - that's the value of that money. But what you are getting is not a debt of that interest, but a debt of the principle only.

Councilman Skalski said that the Water Maintenance Building project and the City Building roof project, each at \$1.3 million, are also projects that should go forward. He was concerned, however, that according to the budget projections, in the year 2002, the City will have a \$3.2 million shortfall, stressing that revenue is not increasing from the state and federal government. It will be tough for the City to meet its financial obligations.

Mayor Martin said that the debt is \$27 million, not \$43 million and you cannot include potential interest paid as debt.

Councilman Skalski said that if we borrow on the three publicly owned projects, that is approximately \$16.5 million to borrow. He felt the City has an obligation for those buildings. He felt that before the City agrees to borrow the money

to renovate of the first floor of the Grove Arcade as a public market and the construct a high tech/flex building at Broadlands Technical Park, we should take a look at where that money is going. He said the Grove Arcade renovation is basically going to be a privately done project by private investments. If the City signs that note for \$2.25 million and then pays another \$200,000 from the City's fund to do publicly owned infrastructure work then it will cost about \$3.5 million. If something goes wrong, the City will be obligated to pay that off.

Councilman Skalski said the other project he has serious reservations about is the privately developed project at Broadlands Technical Park. This is a \$2.5 million loan that the City will guarantee with public money for a private venture with a little over \$300,000 of utility infrastructure that the City will provide. Can the City afford to do it? Should the City become a bank for private investors? What about the other thousands of businesses in Asheville talked about in the economic development policy? Where is the money going to come from to help them?

Mr. Schaefer said that the City proposes to finance approximately \$2,250,000 for renovation of the first floor of the Grove Arcade. That is being done as a public market. The City's involvement is in lending our good name in the financing. The Grove Arcade Public Market Foundation in return for our assistance has pledged the revenues from its rents of the upper floors to service that debt. There is some minimal risk to the City on the financing; that should those rents be insufficient to service the debt, we could be in the real estate market. However, the debt is structured such that it can be repaid at anytime without penalty. Should the project not happen, the City can back out of it very quickly, smoothly and efficiently.

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Mr. Schaefer said that regarding the Broadlands building, the City is proposing to reimburse Biltmore Farms up to \$310,000 for infrastructure - the water and sewer lines and the access road - and to finance construction, acquisition and equipping of the building to the extent of \$2.5 million. There are other participants in addition to Biltmore Farms. The main participant, as far as financial banking, is AdvantageWest - the economic development arm of the State. AdvantageWest will provide for debt service from completion of the building for two years thereafter in order to provide time to market the building and find a permanent tenant or buyer. The developer, Biltmore Farms, will back the financing with full credit pledged to buy out the City two years after completion of the building should we not have a permanent tenant or buyer. That will be available from the initiation of the agreement. Once again, there is a minimal risk to the City. The financing is structured so that without penalty we can get out of it at anytime. He felt the Council has weighed the benefits against that risk and found it to be an advantageous route to go.

Mr. Schaefer pointed out the refunding of the 1991 COPs constitutes about \$4.4 million of the \$27 million we are proposing. The reason for that is the reduction in interest rates with a potential savings to the City of about \$360,000 over the remaining life of that financing. That is not new money - the \$4.4 million is old money and it is definitely the smart way to proceed now.

Mayor Martin said we have discussed this a number of times. The Grove Arcade is a historic landmark in the City of Asheville and a very unique building. It has the potential of having a very positive effect on downtown Asheville. The very minimal risk pales by comparison to the risks other cities take for far less worth-while projects than this.

The benefits could be a million dollars in sales tax revenues every year. There is good reason for us to lend our name especially when a known developer enthusiastically embraces the project. As far as Broadlands building, we have practically no risk. This could provide a lot of jobs in the future for Asheville. These are the risks that we need to take. We need to do something in a positive fashion in order to get jobs - we can't wait for them to come because other cities are trying to get them. The danger is doing nothing.

Councilman Worley said that we have discussed these before and have agreed to do both of these projects. Beyond that, we are talking about a vision for Asheville. With any vision there are risks to be taken. We have analyzed both of these projects and they both have minimal risk. The Grove Arcade is an embodiment of our vision for an even better downtown and we have worked on that vision for a number of years. The Broadlands Technology Park is part of our vision for economic development - an effort to keep good paying jobs in Asheville.

Upon inquiry by Councilman Skalski, Mr. Schaefer said that we are not approving the final allocation of money by adoption of the resolution, only setting a public hearing.

Upon inquiry of Vice-Mayor Field about the City's debt margin, Mr. Schaefer said that as of June 30, 1997, the City can borrow \$283,859,825 and we have only borrowed less than 1% of that amount.

Upon inquiry of Councilman Hay, Mr. Schaefer said that the \$4.4 million refunding replaces existing debt. Debt service for the \$5.3 on the taxable portion for the Grove Arcade and the Broadlands building are to be funded from other sources. That leaves the City with only the three facilities that Councilman Skalski addressed as being uniquely municipal responsibilities. -14-

Councilman Hay said that finance is what his law practice is about and he is very familiar with risk when he sees it. It was his opinion that something backed by AdvantageWest and Biltmore Farms is virtually risk-free.

Upon request of Mr. Ralph Bishop, a copy of the resolution was furnished to him. He did not support the financing and wondered why the resolution has already been written to employ bond counsel.

Mr. Schaefer explained that before Council can consider the resolution approving the financing, those resolutions must be drafted and when you go into the bond market, you need nationally recognized bond counsel. For that reason, in advance of approving the financing itself, the City must retain counsel. The counsel will be paid from the proceeds of the borrowing - that is a cost of the issuance of the debt. The underwriter must be obtained in advance of the sale of the bond also in that they are the ones that underwrite it and actually sell the issue. The underwriter will be paid a portion of the proceeds but until the sale is consummated, there is no payment to the underwriter.

Upon inquiry of Councilman Cloninger due to a conflict of interest since he has been excused from voting in any matters involving the Grove Arcade, it was the opinion of the City Attorney that he should be excused from voting on this matter. Therefore, Councilman Worley moved to excuse Councilman Cloninger from voting. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Martin said that members of Council have been previously been furnished with a copy of the resolution and it will not be read.

Vice-Mayor Field moved for the adoption of Resolution No. 97-187. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 237

L. ORDINANCE NO. 2414 - BUDGET AMENDMENT RELATIVE TO THE ALL AMERICA CITY GRANT

Summary: This consideration of appropriating the \$10,000 Community Grant already received by the City to Asheville-Buncombe VISION, HandMade In America and The Minnie Jones Health Center.

The City is in receipt of the grant in the amount of \$10,000 from the Allstate Foundation. This action appropriates funding to allow disbursement of the grant funds to the recipient agencies.

Staff recommends approval of the budget amendment.

Councilman Skalski pointed out that it cost the City \$53,500 to obtain the All America City designation. He felt that the City had to take almost \$1 million out of Fund Balance to balance the budget this year and it doesn't make sense to spend \$53,000 to get a \$10,000 grant and then give it away.

Finance Director Bill Schaefer said that the \$53,500 figure is appropriate right for the total expenses, however, a

number of the participants indicated that they would be willing to reimburse the City for the expenses of their participation. But, in accordance with the -15-

sense of Council, that was not to be a limitation towards anyone participating, whether or not they could reimbursement. We are in the process now of soliciting those contributions which should be approximately \$10,000.

City Manager Westbrook said that the Council originally authorized an expenditure of \$30,000 which was based on 20 participants. Once plans started being formulated, it was determined that there was a much broader field that needed to go to Kansas City in order to present Asheville in the way it should be presented to maximize our chance to win. There were 56 who traveled and he felt that was the difference from the original authorization, noting that we are trying to collect some of those reimbursements.

Councilman Skalski pointed out that the City presented Handmade in America with a check earlier in the meeting. Even though he felt that Handmade is a very worthwhile project that helps a lot of small businesses, they have already received this year a \$200,000 grant from the state from a \$21 million state overflow fund that was handed out by different politicians throughout the state. He said there was really no public input on how that money was to be distributed. He felt that all the businesses in Asheville that need help should have been looked at, since Handmade already received a \$200,000 grant and he knows they received money from other sources, like the Dept. of Transportation. He asked that an article dated February 18, 1997, from the News & Observer in Raleigh entitled "Passing Out the Goodies" be submitted for the record. (The article is kept on file in the Office of the City Clerk.)

Mayor Martin said that members of Council have been previously been furnished with a copy of the ordinance and it will not be read.

Councilman Worley moved for the adoption of Ordinance No. 2414. This motion was seconded by Vice-Mayor Field and carried on a 6-1 vote with Councilman Skalski voting "no".

ORDINANCE BOOK NO. 16 - PAGE 307

O. ORDINANCE NO. 2415- BUDGET AMENDMENT TO PROVIDE ADDITIONAL FUNDING FOR FESTIVALS AND SECIAL EVENTS FROM REVENUES GENERATED BY THESE EVENTS

Summary: The consideration of a budget amendment, in the amount of \$90,000 to increase Festivals support, the cost of which will be offset by increased revenues.

Upon inquiry of Councilman Skalski, Parks & Recreation Director Irby Brinson explained that during the fiscal 1997/98 budget process, Parks & Recreation submitted a request to use revenue generated from festivals to increase administrative and technical support for festival activities and special events. This request is based upon recommendation from the Bele Chere Strategic Plan which was presented to City Council at their retreat in early 1997. It is proposed that revenues will be used to fund part-time staff to assist with the operations of over 35 festivals and special events produced by the department. Providing part-time assistance will allow the festival staff to aggressively work towards increasing revenue support to fund various events. In addition, funds will be used to enhance the logistical needs for these events which include improving electrical requirements, purchasing tents, physical landscape improvements downtown and other support features. This funding is only approved with the understanding that if the revenue producing festivals such as Bele Chere -16-

and First Night begin to lose money, then this additional financial support would not be available.

Mayor Martin said that members of Council have been previously been furnished with a copy of the ordinance and it will not be read.

Councilman Worley moved for the adoption of Ordinance No. 2415. This motion was seconded by Vice-Mayor Field and carried on a 6-1 vote, with Councilman Skalski voting "no".

ORDINANCE BOOK NO. 16 - PAGE 309

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING RELATIVE TO REZONING EIGHT PARCELS ON THE SOUTHSIDE OF BROAD STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

Mayor Martin said that this public hearing was opened on September 9, 1997, and continued until this date.

Mr. Mike Matteson, Urban Planner, said that on September 9, 1997, City Council continued the public hearing so that the property owner and representatives of the neighborhood could meet to see if there was a mutually agreed upon solution or compromise. They did meet on two separate occasions but there was not a resolution. The City has received a request from the property owner who made the original request during the UDO process, Mr. Dennie Martin, to continue this public hearing again since he is out of town and would like to be present. City staff felt it was good planning sense to request City Council continue the hearing until November 25, 1997, because there are two other rezoning requests on Broad Street. The two requests are scheduled for the November 5 Planning & Zoning Commission meeting and they will more than likely be before City Council on November 25. Council's other options are to hear the rezoning tonight or, since the City is the petitioner, City Council can withdraw the petition.

The following persons urged City Council to vote at the meeting today and not continue the public hearing until November 25. Some reasons were, but are not limited to: Mr. Dennie Martin was aware that the public hearing was continued until this date and he has other partners and/or his attorney who could represent his interests; the continuation might be a way to hold off a decision until after the November 4 elections; many residents took time off from their jobs to come to this meeting; and a policy should be adopted on postponements so that people are not inconvenienced:

Mr. Vincent Ramsuer, 111 Broad Street

Mr. Arthur Davis, 12 Madison Avenue

Ms. Angela Scotchie, 91 Broad Streets

An area resident

Mayor Martin said that he received a letter dated October 6, 1997, from Mr. Dennie Martin which reads in part "I therefore request that the Council consider withdrawal of the pending petition for rezoning and add the area in question to the areas which are being considered by the Charlotte Street Plan." He asked Mr. Craig Justus, attorney representing Mr. Martin, if that is his client's wishes.

Mr. Justus said that in talking with staff, the property owners have filed an application to rezone what is now Office all the way down Broad Street to Mr. Martin's present business to Residential. He felt -17-

it made sense to consider all the Broad Street rezoning requests at one public hearing. Mr. Justus said that he did not represent Mr. Martin at any of the meetings nor did he attend them. Therefore, he cannot speak as his representative regarding what happened at those meetings. He believed Mr. Martin wanted the opportunity to speak to City Council on what happened at those meetings from his prospective, since City Council was asked not to attend the meetings.

Vice-Mayor Field said it sounded reasonable to look at the whole street at one time based on a more holistic view of the impact.

Upon inquiry of Councilman Hay, Mr. Matteson explained that if the City withdrew the petition, the zoning would remain RM-16, and would not be considered with the other two rezoning petitions which will be before City Council on November 25. He said that City Council or the property owner could bring the issue back again before Council in the form of a new petition.

City Attorney Oast also pointed out that in the case of a denial, Council can't take action on that particular request again for a year.

Upon inquiry of Councilman Skalski, Mr. Matteson said that one of the rezoning petitions coming to City Council involved about 12-14 lots going west from these 8 lots on Broad Street and the other rezoning petition is 22 Broad Street.

Councilman Skalski felt a small area plan, not on the scale of Charlotte Street, would benefit the entire area and would result in a compromise for everyone involved.

Mr. Matteson said that a small area plan typically involves more than just deciding the zoning of properties. He pointed out that staff is currently working on the Charlotte Street Small Area Plan and there are a number of other areas who have either requested a small area plan or that staff is considering a small area plan.

Councilman Hay was not inclined to postpone the hearing. He felt that it was already postponed for the parties involved in order to try to come up with a compromise. He didn't think postponement was fair to everyone who participated to this point. He felt Council should withdraw the application which leaves it at RM-16. But, it also creates an opportunity, if Mr. Martin chooses to do so, to submit a rezoning petition requesting that his lots be rezoned and by the time that process works its way through, perhaps Council can look at Broad Street all at one time.

Councilman Worley didn't feel that there would be enough time for a new rezoning petition to go through the process in order that it be considered at the November 25 meeting.

City Attorney Oast pointed out that Councilman Cloninger has previously been excused from voting on this matter due to a conflict of interest.

Councilman Worley moved to continue the public hearing until November 25, 1997. This motion was seconded by Councilman Sellers.

Upon inquiry of Councilman Skalski, City Attorney Oast felt that City Council should take some action on the request, however, if Council takes no vote at the meeting today, it would automatically be continued until their next meeting.

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City Attorney Oast said that to leave the zoning the way it is now, Council has the options of voting to deny the rezoning petition or withdrawing the petition. He explained that the only difference is that unless there is a ¾'s vote of Council to resurrect the issue, it can't come back before Council for one year.

Vice-Mayor Field said that the community has strong feelings and there is a

need for affordable housing. She also felt that it would be nice to do a small area plan, however, there are three rezoning requests that need to be dealt with, therefore, she would support continuing the public hearing until November 25. She suggested that City Council hold a worksession prior to November 25 to look at the all the rezonings. The worksession could be held in the evening.

Councilman Hay felt it was a good idea to get together at a worksession. He said that if Council withdraws the petition, the antagonism will be taken out of the process and neighborhood will have an obligation to work with Mr. Martin to control the progress of their own application on the rest of Broad Street. He, therefore, made a substitute motion to withdraw the application. This motion was seconded by Councilman Skalski.

Councilman Worley could easily vote to withdraw the petition if the other two rezoning petitions would be withdrawn too, because then all three issues could be discussed at one time. However, as long as the other two rezonings are scheduled for November 25, then Council should continue this hearing so they all stay on the same track.

Upon inquiry of Mayor Martin, Mr. Matteson said that if the petition is withdrawn, the earliest a new rezoning petition could be considered by the Planning & Zoning Commission would be at their December meeting.

City Attorney Oast pointed out that if the rezoning petition is withdrawn, the whole process starts again. Right now if the matter is continued, the protest petition remains valid. However, if the rezoning petition is withdrawn, the protest petition will need to be re-filed in order to be valid.

Mayor Martin then asked for a voice vote on Councilman Hay's substitute motion to withdraw the petition. Councilman Hay's motion failed on a 2-4 vote with Councilmen Hay and Sellers voted "yes" and Mayor Martin, Vice-Mayor Field and Councilmen Sellers and Worley voting "no".

Mayor Martin then asked for a voice vote on Councilman Worley's motion to continue the public hearing until November 25, 1997. Councilman Worley's motion carried on a 4-2 vote with Mayor Martin, Vice-Mayor Field and Councilmen Sellers and Worley voting "yes" and Councilmen Hay and Skalski voting "no".

Councilman Skalski moved to do a small area plan for this area. This motion died for a lack of a second.

Ms. Leni Sitnick, Asheville resident, suggested City Council consider establishing a public hearing/agenda item/postponement policy. That way neighborhoods who take time off from work, get baby-sitters, etc., are not inconvenienced. The policy should address a timely notice to go out to all the affected citizens.

Mayor Martins said that was an interesting suggested, however, you can't make a single policy that will be applicable in all situations. -19-

#### B. PUBLIC HEARING RELATIVE TO REZONING PROPERTY ON EMMA ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO CI COMMERCIAL INDUSTRIAL

Mayor Martin said that on September 9, 1997, this public hearing was continued until today at the request of the petitioner.

Mayor Martin opened the public hearing at 6:40 p.m.

City Clerk Burlson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is consideration of an ordinance to rezone property on Emma Road (PIN Nos. 9639.18-31-8279 and 9639.18-31-5890) from RM-8 Residential Multi-Family Medium Density to CI Commercial Industrial.

The subject property is located on Emma Road and is owned by Appalachian Stove. The 2010 Plan indicates this area to be low density residential. These two vacant tracts of land are surrounded on north, east, and west by mobile home parks and on the south by a golf course. One lot currently has one residential structure next to the main road. Emma Road is a narrow (only 17 feet wide) and winding, highly traveled residential collector street with no sidewalks and very little shoulder. This immediate area would need to be upgraded for access to any large permitted use in the CI district.

This site was reviewed by the Technical Review Committee and they confirmed that this site/area does not currently have the infrastructure to support every commercial/industrial development permitted in the CI district. The street is inadequate from design standards at any point of ingress to these properties. Limited turning movements from Louisiana Avenue onto Emma Road has dictated some restrictions on large vehicle use. Water flow for fire protection for certain uses could exist from the fire hydrant found on the property; however, any large permitted use would require infrastructure upgrades. Sewer service is available across Emma Road and the Southern Railway tracks but would also need upgrades for large development.

This property is outside the City limits of Asheville.

The Planning staff reviewed the rezoning request and recommended denial of PIN Nos. 9639.18-31-8279 and 9639.18-31-5890 from RM-8 Residential Multi-Family Medium Density to CI Commercial Industrial. At the August 6, 1997, the Planning & Zoning Commission meeting, the commissioners voted unanimously to deny the rezoning request of the two lots on Emma Road.

On August 18, 1997, Mr. Barry Eavenson, President of Appalachian Stove and Fabricators Inc. appealed the Planning & Zoning Commission's decision to City Council.

Mr. James Rice, one of the property owners, stressed that the property was originally zoned R-5 before the UDO changed its zoning and part of it was also zoned commercial industrial. He said that the size of and traffic on the road is common to the Emma community. He said water, sewer and a fire hydrant is on the property. He said there is electricity to the property and it's on a bus route. He said the plans for the property are to build small type businesses and office structures to support small businesses in this area. Their goal is to improve the community. He noted that this area is a very mixed area.

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Upon inquiry of Councilman Worley, Mr. Ownbey said that other uses were looked at, but industrial did not allow both office and warehouses which the petitioner had requested. The commercial industrial district was the only zone that would allow both of those uses.

Mr. Ownbey answered questions from Councilman Worley relative to infrastructure limitations in that area.

Councilman Sellers said that he visited the property and felt that the community does limit itself to light industrial.

City Attorney Oast reminded City Council that any use in the commercial industrial district will be allowed if rezoned.

Mayor Martin closed the public hearing at 6:53 p.m.

Mayor Martin said that members of Council have previously received a copy of

the ordinance and it would not be read.

Councilman Sellers moved to rezone the property on Emma Road from RM-8 to CI. This motion was seconded by Councilman Worley and failed on a 2-4 vote, with Councilmen Sellers and Worley voting "yes" and Mayor Martin, Vice-Mayor Field and Councilmen Cloninger, Hay and Skalski voting "no."

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THORPE CONSTRUCTION COMPANY TO RECONSTRUCT THE CHEROKEE ROAD RETAINING WALL

B. BUDGET AMENDMENT TO RECONSTRUCT THE CHEROKEE ROAD RETAINING WALL

At the request of City staff, these items were postponed until October 28, 1997.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 23, 1997, AND THE WORKSESSION HELD ON OCTOBER 7, 1997

Councilman Worley moved for the adoption of the minutes of the regular meeting held on September 23, 1997, and the worksession held on October 7, 1997. This motion was seconded by Vice-Mayor Field and carried unanimously.

B. ORDINANCE NO. 2416 - BUDGET AMENDMENT RELATIVE TO THE HILLS OF BEAVERDAM

City Manager Westbrook said that this is consideration of a budget amendment, in the amount of \$138,745, to establish a budget for the Hills of Beaverdam Street Improvement Project.

On August 12, 1997 Resolution No. 97-126 was adopted authorizing the City Manager to enter into an agreement with the Hills Of Beaverdam Homeowners Association, Inc. for street improvements. The City received -21-

the funding in the amount of 137,050 from the Homeowners Association on August 27, 1997, and additional funds of \$337 on September 29, 1997. The City will also collect an additional \$1,357 for driveway pipe installation not included in the original agreement. This budget amendment will reallocate all of the funding to the appropriate line item in order to purchase the materials for this project.

The Public Works staff recommends that a budget amendment in the amount of \$138,745 be approved.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Skalski moved for the adoption of Ordinance No. 2416. This motion was seconded by Vice-Mayor Field and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 311

C. COUNCIL OF INDEPENDENT BUSINESS OWNERS RESOLUTION

Mr. Bob Selby, President of the Council of Independent Business Owners, read the following resolution dated October 14, 1997:

"WHEREAS, after years of struggling with amortization and sign control issues, the City of Asheville appeared to have come to a point of Resolution. There was no litigation and the outdoor advertising companies were voluntarily complying

with the takedown orders; and

"WHEREAS, after years of factionalism, divisiveness, and interest group conflict, our community had come together in the Asheville Buncombe Visioning process to build a consensus for the future of our community and to emphasize the things that all of us could agree on and work on together; and

"WHEREAS, the recent proposals run the outdoor advertising companies completely out of Asheville and to severely restrict off-premise signs of all kinds made by Councilman Chuck Cloninger is made suddenly, without notice to the community and in the midst of a campaign for his re-election to City Council; and

"WHEREAS, the proposal was run through the Planning and Zoning Commission so rapidly that the Commission voted on drafts of the proposed ordinance which they had not even been able to read because they were handed out just before the meeting; and

"WHEREAS, the proposals are to be considered by the City Council of the City of Asheville.

"NOW, THEREFORE, be it resolved that the City Council of the City of Asheville is urged to reject Councilman Cloninger's proposals to ban off-premise signs in the City of Asheville because the proposal is misguided and bad for our community. The proposal is divisive and exclusionary. It violates property rights. It is extremely detrimental to many small businesses in the City of Asheville and it undermines the consensus building process that has been so successful over the last two years."

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#### D. CITY SHOP

Mr. Harley Dunn suggested the City of Asheville open a shop that would sell extra City T-shirts, old street signs, old parking meters, etc. He felt that would be an excellent source of revenue.

City Manager Westbrook explained that Asheville has already looked into a shop of that type and outlined some of the obstacles to opening that shop.

#### E. REQUEST FROM COVEN OLDENWILDE

Ms. Niki Thurston, representing Dixie Deerman and Steve Rasmussen of Coven Oldenwilde in Asheville, requested City Council vote to recommend that the East Memorial Stadium's floodlights be turned off for the 3<sup>rd</sup> Annual Witch Ritual and hold Coven Oldenwilde responsible for lighting the area for the participants. The atmosphere that would be generated by the lights in the stadium would be very harsh and it would not be conducive to the ritual Rite. They have come up with some alternate lighting that would provide safety for the individuals and would be more conducive to the religious and respectful atmosphere that they are trying to create for this particular ritual. She said that in addition to their lighting, there is (1) ambient lighting coming from McCormick Field below, (2) ambient lighting coming from the housing project and park directly behind there, and (3) there is fluorescent lighting in the parking lot abutting the stadium.

Mr. Irby Brinson, Director of Parks & Recreation, explained that

in June they were contacted with an original application to conduct a 3<sup>rd</sup> Annual Witches Ritual at Memorial Stadium. The permit was approved and sent back on July 9. Mr. Jeff Joyce, Athletic Programs Supervisor, met with Ms. Deerman to discuss several items at that particular time about their particular use which included using the rest rooms,

concession stand, having electrical outlets in the pressbox, and that they would have lighting with torches. Mr. Joyce suggested that they submit in writing their particular needs and he did receive their request on September 30. Outlined in their letter were eight specific needs. These needs ranged from removing goal posts and steel cable, repairing holes in fencing, to not turning on the Stadium lights. In their letter they referred to the potential for participants bumping into the goal posts and injuring themselves. They also referred to the fact that many may trip over the cable and hurt themselves. Mr. Joyce then brought the letter to his attention who recommended the letter be referred to the City's Risk Manager John Miall and the City Attorney Bob Oast.

Mr. Miall responded by stating that the City should rent the facility as is without modifications, and that the City should not agree to turn off any lights. Turning off the lights would be highly irresponsible of the City and would expose the City to an unacceptable level of risk. Mr. Miall faxed our excess liability carrier a copy of the request for their review and the carrier agreed with Mr. Miall. The effect of this is that having been advised to keep the lights on, the City may be denied coverage in the event of a loss if the lights are off. Mr. Joyce outlined this in a letter to the group dated October 2.

Upon inquiry of Councilman Sellers, Mr. Brinson said that the cost to rent the Stadium is \$25 and since this is football season and the stadium is used by the West Asheville Youth Football, the goal posts are up.

Ms. Thurston said that regarding the goal posts, they have decided to make them very identifiable by using them in part of their Rite by -23-

decorating them and making it so that people have to go around them. The fixed steel cable will also be decorated, with some curtain-type ribbon that is very light and they will also have snap-sticks which will be used so that it will be easily identifiable to anyone going by there.

Upon inquiry of Vice-Mayor Field, Mr. Miall said that having the insurance carrier's recommendation in hand to not turn off the lights, would expose the City to the possibility of a loss for which they would deny coverage.

When Vice-Mayor Field asked Mr. Miall if he told the insurance carrier that there would be ambient light on the field, Mr. Miall responded that when Ms. Deerman called him, he conferenced the call to the insurance carrier and they talked about the possibility of dimming lights or turning on every other bank of lights. It was the insurance carrier's recommendation to not turn the lights off.

Upon inquiry of Councilman Sellers, Mr. Brinson said that each group is responsible to clean up after themselves.

Mr. Brinson pointed out that there are also drains in the field and impressions that when the field is lit, they are obvious, but not lit to standards would be a hazard as well.

Ms. Christie Howard, also speaking on behalf of Dixie Deerman and Steve Rasmussen, stressed that they are asking for alternative lighting, not total darkness, that will be more conducive to a spiritual atmosphere and a religious ritual. They have a good safety record and even requested a better, flatter site this year to take care of safety. They will be decorating the posts and cable so they won't be a hazard. They have 40 torches and 40 additional lights that will be hung onto the torches that will take care of the light, but won't be as brilliant and glaring as the floodlights. The City has waived their signing a hold harmless agreement and also waived their having to have liability insurance. They feel their risk has been reduced due to their diligent planning. This will be a controlled environment.

Mayor Martin explained that it would be hard for the City to create a potential liability. Even though they are a responsible group, they can't absolve the City from liability.

Upon inquiry of Vice-Mayor Field, Ms. Howard explained why APD Captain Lambert suggested Memorial Stadium as an alternate site this year.

Upon inquiry of Councilman Sellers, City Attorney Oast said that the City's policy is that the facility is available for use in accordance with our rules and regulations which have been established through the Parks & Recreation

Department and other City departments. The only motion Council would need to make in this instance, if one is to be made, is to authorize staff to vary from that policy.

Councilman Skalski felt that he could not vote intelligently since he has not seen the alternative lighting plan.

Mr. Brinson said that the City's insurance carrier has recommended that the City not turn off the lights because it would expose the City to the possibility of a loss for which they would deny coverage.

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Councilman Skalski moved to turn the floodlights off, subject to the group providing alternative lighting as outlined above, and the decoration of goal posts and steel cables. This motion died for lack of a second.

Vice-Mayor Field said that she has great respect for the religious observance that they intend to celebrate on October 31, but felt that Memorial Stadium was a totally inappropriate place for the event. She wished there was a more appropriate place at a reasonable price. Ms. Thurston responded that they have been denied neighborhood parks.

#### F. CLAIMS

The following claims were received by the City of Asheville during the week of September 19-25, 1997: Alice Weatherman (Water), Nancy Hudgins (Water), Reggie Sellers (Water), Wendy Medford (Streets), Brad Griffin (Streets) and Michelle LeBlanc (Streets).

The following claims were received during the week of September 26-October 2, 1997: John E. Grear (Water), Jim Gaddy (Sanitation), Urban Trail (Parks & Recreation) and Marilyn Gaines (Parks & Recreation).

The following claims were received during the week of October 3-9, 1997: Denise Sales (Civic Center), Fusia Davis (Streets), Marci Shipman (Water), Richard Pressley (Sanitation), Jack Pruitt (Streets) and Dany Roberts (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

#### VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:23 p.m.

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CITY CLERK MAYOR

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